

**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

2013 DEC 12 PM 6:13

**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6604

DATE COMPLAINT FILED: July 2, 2012

DATE OF NOTIFICATION: July 10, 2012

DATE OF LAST RESPONSE: October 1, 2012

DATE ACTIVATED: October 9, 2012

ELECTION CYCLE: 2012

EXPIRATION OF SOL: October 1, 2016  
to August 14, 2017

**COMPLAINANTS:**

Kenneth James Krayeske (MUR 6604)

**RESPONDENTS:**

Lisa Wilson-Foley for Congress and William M. Kolo  
in his official capacity as treasurer (MUR  
6604)

John Rowland (MUR 6604)  
CBS Radio Stations Inc. (WTIC) (MUR 6604)

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(8)  
2 U.S.C. § 431(9)  
2 U.S.C. § 434(b)  
2 U.S.C. § 441b(a)

11 C.F.R. § 100.73

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1 11 C.F.R. § 100.132  
2 11 C.F.R. § 104.3  
3 11 C.F.R. § 109.21  
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6 **INTERNAL REPORTS CHECKED:** Disclosure Reports  
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8 **OTHER AGENCIES CHECKED:**

9 **I. BACKGROUND**  
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In addition, the Complaint in MUR 6604 alleges that CBS Radio Stations Inc. (WTIC) ("CBS Radio") and Rowland as its agent made an in-kind corporate contribution to the Committee when Rowland used time during a politically-themed radio talk show he hosted to attack one of Wilson-Foley's opponents in the 2012 convention and primary elections.<sup>6</sup> That Complaint further alleges that the Committee thus accepted an impermissible corporate contribution and failed to disclose it.<sup>7</sup> Respondents CBS Radio and the Committee argue that the allegations concerning that contribution are also made without personal knowledge and lack factual support, and regardless should be rejected under the statutory exemption for press entities to the prohibition against corporate contributions.<sup>8</sup> Rowland responded to the allegations concerning the radio show, asserting that the claims are factually inaccurate and that the appearance on the program of Wilson-Foley's opponent, who held state office, did not occur at Rowland's request

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<sup>6</sup> Each congressional district in Connecticut holds a party nominating convention that the Commission has recognized as an election separate from the primary and general elections. *See* Advisory Op. 1976-58 (Peterson); Advisory Op. 2004-20 (Farrell). The convention and primary elections at issue here occurred on May 14, 2012, and August 14, 2012, respectively.

<sup>7</sup> Compl. at 2-3, MUR 6604.

<sup>8</sup> Committee Resp. at 3-8, MUR 6604; CBS Radio Resp. at 5-6 (Aug. 20, 2012).

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and related solely to issues concerning the state office.<sup>9</sup> Rowland:

asserts generally that the

Complaints are politically motivated and meant to generate negative publicity.<sup>10</sup>

Based on the record presently before the Commission, we recommend that the  
Commission find

no reason to believe that Rowland and CBS Radio  
made an in-kind corporate contribution through the radio talk show program.<sup>11</sup>

## II. ANALYSIS

<sup>9</sup> Rowland Resp. at 1-2, MUR 6604 (Oct. 1, 2012).

<sup>10</sup> *Id.* at 2.

<sup>11</sup> The Complaint in another matter, MUR 6522 (Lisa Wilson-Foley for Congress, *et al.*), alleged that the Committee and Wilson-Foley received impermissible in-kind contributions from Apple Health, as well as from other family businesses, All Star Therapy, LLC, and Blue Fox Enterprises, Inc., in the form of television advertisements and postings on Facebook and a website. In a First General Counsel's Report in that matter dated February 5, 2013, we recommended that the Commission find no reason to believe respondents violated the Act and close the file. The Commission approved our recommendations on June 25, 2013. Amended Commission Cert., MUR 6522 (July 17, 2013).

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1 "attacked" an opposing candidate on a politically-themed radio talk show  
2 program that Rowland hosted.<sup>12</sup>

3 Rowland served as governor for the State of Connecticut from 1995 to 2004. On  
4 December 23, 2004, Rowland pleaded guilty in federal district court to a charge of  
5 conspiracy to commit honest services fraud and to defraud the United States in relation to  
6 his receipt of gratuities while serving as Connecticut's governor.<sup>13</sup> He currently serves as  
7 the host of a politically-themed radio show called the John Rowland Show.<sup>14</sup>

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<sup>12</sup> Compl. ¶¶ 4-5, MUR 6604;

<sup>13</sup> See Information, *United States v. John G. Rowland*, 3:04-CR-367 (Dec. 23, 2004); Plea Agreement, *United States v. Rowland*, 3:04-CR-367 (Dec. 23, 2004). Rowland later was sentenced to twelve months and a day in prison, a \$72,000 fine disgorging his unlawful gratuities, an additional \$10,000 criminal fine, and four months of home confinement. Judgment, *United States v. Rowland*, 3:04-CR-367 (Mar. 18, 2005).

<sup>14</sup> Rowland's show has been on the air since September 2010. It airs on weekdays from 3 p.m. to 6 p.m. and "focuses on local issues that affect our towns and state . . ." See CBS Radio Resp. at 2; CBS CONNECTICUT: JOHN ROWLAND, <http://connecticut.cbslocal.com/audio-on-demand/wtics-state-and-church/>. Topics cover a range of subjects, from discussions of recent legislative activity to healthcare, state spending, and taxes. See CBS Radio Resp. at 2.

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2. Legal Analysis

The Act prohibits corporations from making contributions in connection with a federal election.<sup>38</sup> Corporate officers and directors also may not “consent” to any contribution by the corporation that is prohibited by section 441b(a).<sup>39</sup> The Act further prohibits any candidate, political committee, or other person from knowingly accepting or receiving an impermissible corporate contribution.<sup>40</sup> The Act and Commission regulations require political committees to report all contributions received, whether monetary or in-kind, during a given reporting period.<sup>41</sup>

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<sup>38</sup> 2 U.S.C. § 441b(a).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 2 U.S.C. § 434(b); 11 C.F.R. § 104.3.

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**B. Alleged Corporate Contribution from CBS Radio**

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**1. Factual Background**

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the MUR 6604 Complaint alleges that Rowland, as radio talk show host, and

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CBS Radio made an impermissible in-kind corporate contribution to the Committee when

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Rowland used his radio talk show to attack one of Wilson-Foley's opponents, Andrew

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Roraback, that the Committee accepted an impermissible corporate contribution, and that

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the Committee failed to disclose that contribution.<sup>69</sup> The Complaint alleges that radio air

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time is a commodity, and because Rowland used his show to benefit the Committee, the

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Committee should have reported the air time as a contribution.<sup>70</sup> The Complaint also

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alleges that the Committee and CBS Radio coordinated the attack, with Rowland acting

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on behalf of CBS Radio as its agent.<sup>71</sup>

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<sup>69</sup> Wilson-Foley faced Roraback in the May 14, 2012, convention election and the August 14, 2012, primary election.

<sup>70</sup> Compl. at 2-3, MUR 6604.

<sup>71</sup> *Id.* at 2.

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1 Respondents CBS Radio and the Committee assert that the Act's press exemption  
2 covers Rowland's radio show and therefore it did not constitute a contribution.<sup>72</sup> CBS  
3 Radio states that it owns and operates WTIC, a news/talk AM radio station serving the  
4 greater Hartford, Connecticut area.<sup>73</sup> WTIC broadcasts nationally syndicated  
5 programming as well as local programming, including a program hosted by Rowland that  
6 has been aired since September 2010.<sup>74</sup> The show is broadcast weekdays from 3 p.m. to  
7 6 p.m. and "focuses on local issues that affect our towns and state . . . ."<sup>75</sup> According to  
8 CBS Radio, the show's topics cover a range of subjects, from discussions of recent  
9 legislative activity to healthcare, state spending, and taxes.<sup>76</sup> CBS Radio also states that  
10 it is a wholly-owned subsidiary of CBS Radio Inc., a media and entertainment  
11 corporation specializing in radio programming.<sup>77</sup> CBS Radio Inc. is an indirect  
12 subsidiary of CBS Corporation, a publicly traded mass media corporation that is neither  
13 owned nor controlled by a candidate or political party.<sup>78</sup> Finally, CBS Radio asserts that  
14 it was acting as a press entity at all times when it produced and broadcast Rowland's  
15 show on radio station WTIC.<sup>79</sup>

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<sup>72</sup> Committee Resp. at 5-9, MUR 6604; CBS Radio Resp. at 3-6 (Aug. 20, 2012).

<sup>73</sup> CBS Radio Resp. at 1.

<sup>74</sup> *Id.* at 1-2.

<sup>75</sup> *Id.* at 2 (citing CBS Connecticut: John Rowland, <http://connecticut.cbslocal.com/audio-on-demand/wtics-state-and-church/> (last visited Nov. 26, 2013)).

<sup>76</sup> CBS Radio Resp. at 2.

<sup>77</sup> *Id.* at 1.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 5.

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1 Rowland states in his Response that he discussed with Roraback, a sitting state  
2 senator, the death penalty issue, but “nothing to do with [the] campaign.”<sup>80</sup>

3 2. Legal Analysis

4 Under the Act, the term “expenditure” does not include any news story,  
5 commentary, or editorial distributed through the facilities of any broadcasting station,  
6 unless such facilities are owned or controlled by any political party, political committee,  
7 or candidate.<sup>81</sup> Commission regulations further provide that neither a “contribution” nor  
8 an “expenditure” results from “any cost incurred in covering or carrying a news story,  
9 commentary, or editorial by any broadcasting station . . . unless the facility is owned or  
10 controlled by any political party, political committee, or candidate[.]”<sup>82</sup> These exclusions  
11 are known as the “press exemption.” Costs covered by the press exemption are not  
12 contributions or expenditures and are not subject to the reporting requirements of the Act  
13 and Commission regulations.

14 The Commission conducts a two-step analysis to determine whether the press  
15 exemption applies. First, the entity engaging in the activity must be a press or media  
16 entity, in that its focus is the production, on a regular basis, of a program that  
17 disseminates news stories, commentary, or editorials.<sup>83</sup> Second, the Commission  
18 considers (i) whether the press entity is owned or controlled by a political party, political  
19 committee, or candidate, and, if not, (ii) whether the press entity is acting as a press entity

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<sup>80</sup> Rowland Resp. at 2.

<sup>81</sup> 2 U.S.C. § 431(9)(B)(i).

<sup>82</sup> 11 C.F.R. §§ 100.73, 100.132.

<sup>83</sup> See, e.g., Advisory Op. 2007-20 (XM Radio) (“AO 2007-20”); Advisory Op. 2005-19 (Inside Track) (“AO 2005-19”); Advisory Op. 2005-16 (Fired Up!) (“AO 2005-16”).

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1 in conducting the activity at issue (*i.e.*, whether it is acting in its “legitimate press  
2 function”).<sup>84</sup>

3 Here, both steps of the press exemption analysis are met. First, CBS Radio is in  
4 the business of producing and broadcasting national and local radio programs, including  
5 Rowland’s radio show that airs weekdays and covers a variety of news stories,  
6 commentary and editorial content.<sup>85</sup> CBS Radio, therefore, is a press entity. Second,  
7 CBS Radio is not owned or controlled by a political party, political committee, or  
8 candidate.<sup>86</sup> It also was acting within its legitimate press function: Rowland’s weekday  
9 radio show was broadcast to the general public throughout southern New England, not  
10 just within the relevant district,<sup>87</sup> and the format of the show appears to be comparable in  
11 form to those ordinarily broadcast by CBS Radio.<sup>88</sup> Further, as the Commission has  
12 repeatedly stated, lack of objectivity in the show’s news stories, commentaries, or

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<sup>84</sup> *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). In determining whether a press entity is acting in its legitimate function, the Commission considers (1) whether the press entity's materials are available to the general public, and (2) whether the materials are comparable in form to those ordinarily issued by the press entity. AO 2005-16 (citing *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 251 (1986)).

<sup>85</sup> CBS Radio Resp. at 1-2 (citing CBS Connecticut: John Rowland, <http://connecticut.cbslocal.com/audio-on-demand/wtics-state-and-church/> (last visited Nov. 26, 2013)).

<sup>86</sup>

<sup>87</sup> CBS Radio Resp. at 5.

<sup>88</sup> *Id.* at 1-2.

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1 editorials is irrelevant.<sup>89</sup> Thus, Rowland's radio show is covered by the press exemption  
2 and any costs associated with the production and distribution of the show are not treated  
3 as contributions or expenditures under the Act and Commission regulations. Given this  
4 conclusion, the Commission need not consider whether the alleged contribution was  
5 coordinated.<sup>90</sup> We therefore recommend that the Commission find no reason to believe  
6 that Radio or Rowland violated 2 U.S.C. § 441b(a) by making a contribution in  
7 connection with Rowland's radio show, or that the Committee violated 2 U.S.C.  
8 §§ 441b(a) or 434(b) by accepting such a contribution.

<sup>89</sup> See AO 2007-20; AO 2005-19; AO 2005-16; Statement of Reasons, Comm'rs. Mason, McDonald, Sandstrom, Thomas, and Wold at 3, MURs 4929, 5006, 5090, 5117 (ABC, CBS, NBC, New York Times, Los Angeles Times, and Washington Post) ("Unbalanced news reporting and commentary are included in the activities protected by the media exemption").

<sup>90</sup> See 11 C.F.R. § 109.21(b)(1) (excludes payments for exempted activities from in-kind contributions); MUR 6242 (J.D. Hayworth 2010) (because the press exemption applies to the alleged contributions, it is unnecessary to consider whether some of the activities might constitute coordinated communications).

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IV. RECOMMENDATIONS

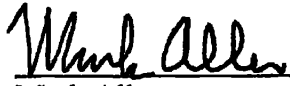
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3. Find no reason to believe that John Rowland violated 2 U.S.C. § 441b(a) and close the MUR 6604 file as to him;
4. Find no reason to believe that CBS Radio Stations Inc. (WTIC) violated 2 U.S.C. § 441b(a) and close the MUR 6604 file as to it;
5. Find no reason to believe that Lisa Wilson-Foley for Congress and William M. Kolo in his official capacity as treasurer violated 2 U.S.C. §§ 441b(a) or 434(b) with respect to the allegation that they received a contribution from CBS Radio Stations Inc. (WTIC);
- 6.
7. Approve the attached Factual and Legal Analyses; and
8. Approve the appropriate letters.

Date

12/12/13

  
Daniel A. Petalas  
Associate General Counsel  
for Enforcement

  
Peter G. Blumberg  
Assistant General Counsel

  
Mark Allen  
Attorney

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